HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20631 OF 2007

Between:

Komara Venkata Narsaiah

.....Petitioner

AND

The District Collector,
Cuddapah District, Cuddapah
and another

.....Respondents

::ORDER::

Counsel for the Petitioner : Shri S.A.K. Mynuddin

October 1, 2007

Per G.S.Singhvi, CJ

The contours and parameters of the High Court's power to entertain probono publico litigation and writ petitions filed in the name of public interest litigation are well defined. In **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**[1], a three-judge Bench of the Supreme Court reviewed various judicial precedents on the subject and laid down the following principles for entertaining the public interest litigation:

> (i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises.
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> (ii) Issues of public importance, enforcement of fundamental rights, of a large number of the public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings.
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> (iii)Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.
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> (iv)The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the depraved (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.
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> (v)When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the

petition.

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation.

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee.

In Sachidanand Pandey v. State of W.B. ((1987) 2 SCC 295), it was held:

> "It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights and invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles ad hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

In Janata Dal v. H.S.Chowdhary ((1992) 4 SCC 305), the Supreme Court observed:

> "It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance,

deserves rejection at the threshold."

The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

In Narmada Bachao Andolan v. Union of India ((2000) 10 SCC 664), it was held as under:

It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction."

(x) The court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, they do not have a power akin to Article 142 of the Constitution of India.

(xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule."

In addition to the above noted principles, the Supreme Court has

also held that the Court should not entertain petitions filed in the name of public interest litigation for settling private disputes or petitions filed with ulterior motives and thereby encourage unscrupulous litigants to burden the already over-burdened dockets of the Courts. It is also the consistent view of the Courts that before filing a petition in public interest, the petitioner must make reasonable enquiry from the concerned authorities to prima facie find out the truth or otherwise relating to grievance of the have-nots and disadvantaged class of the society or what he perceives as a wrong done to the general public.

We have taken cognizance of the above noted principles and propositions because, after perusing the affidavit of the petitioner – Komara Venkata Narsaiah, who is ex-Sarpanch of Vontimitta Gram Panchayat, Vontimitta Village and Mandal, Cuddapah District, and hearing his counsel Shri S.A.K. Mynuddin we are convinced that the writ petition filed by him for issue of a mandamus to the respondents to take action on complaint dated 14.8.2007 and to stop all further construction in Survey No.1500/B1 in Vontimitta Village and Mandal, Cuddapah District, lacks
bona fide and is liable to be dismissed.

The petitioner has described himself as a public spirited person, who is interested in protecting public properties and alleged that out of Ac.39-50 gts. of poramboke land, nearly
Ac.11-00 was allotted for the government offices and charitable services and that Ac.2-00 of land located near main bazaar has been unauthorisedly encroached by some politically influential persons and they are selling the same to private upper class persons, who are intending to construct houses for them. He has then made reference to application dated 16.8.2007 made under the Right to Information Act, 2005 and averred that respondent No.2 has not supplied complete information about the encroached land. In paragraph 7 of his affidavit, the petitioner has alleged that some persons unauthorisedly encroached village poramboke and are selling the same by carving

out plots.

Shri S.A.K. Mynuddin invited our attention to complaint dated 14.8.2007 made by the petitioner to District Collector and District Panchayat Officer, Cuddapah and submitted that even though the concerned officers are aware of the encroachment of village poramboke, they have intentionally refrained from taking action against the encroachers because the latter have considerable influence in the political circles of the State.

In the context of the prayer made by in the writ petition and arguments made by the learned counsel, we repeatedly asked him as to why the persons named in the complaint dated 14.8.2007 have not been impleaded as parties so as to enable the Court to enquire into the correctness of the allegation made by the petitioner regarding the encroachment of village poramboke. We pointed out to the learned counsel that being an ex-Sarpanch of the Gram Panchayat, his client must be knowing the persons, who are said to have encroached the village poramboke and, therefore, there cannot be any reason for non-impleadment of the alleged encroachers. We also asked the learned counsel to explain the discrepancy regarding the extent of land which is said to have been encroached (in paragraph 5 of the writ petition, the extent of land encroached is shown as Ac.2-00, whereas in the complaint dated 14.8.2007, Ac.19-00 of land is shown to have been encroached). In reply to the above queries, the learned counsel could not give any satisfactory reply and continued to reiterate that the Court should order a detailed investigation into the matter.

In our opinion, non-impleadment of the persons who are said to have encroached village poramboke is fatal to the petitioner's prayer for issue of a direction to the respondents to stop all further construction in Survey No.1500/B1 in Vontimitta Village and Mandal of Cuddapah District.

Hence, the writ petition is dismissed. However, liberty is given to the petitioner and other enlightened citizens of the area to file fresh

petition by impleading the alleged encroachers as parties.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

October 1, 2007

svs

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[1] (2003) 7 SCC 546